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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,916	06/29/2001	Arie Otte	2799/64201	9696

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Amster Rothstein & Ebenstein
90 Park Avenue
New York, NY 10036

EXAMINER

MCKELVEY, TERRY ALAN

ART UNIT	PAPER NUMBER
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1636

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Response to Rule 312 Communication	Application No.	Applicant(s)	
	09/762,916	OTTE, ARIE	
	Examiner	Art Unit	
	Terry A. McKelvey	1636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --


1. ☒ The amendment filed on 18 October 2004 under 37 CFR 1.312 has been considered, and has been:

- a) ☐ entered.
- b) ☐ entered as directed to matters of form not affecting the scope of the invention.
- c) ☐ disapproved because the amendment was filed after the payment of the issue fee.
Any amendment filed after the date the issue fee is paid must be accompanied by a petition under 37 CFR 1.313(c)(1) and the required fee to withdraw the application from issue.
- d) ☒ disapproved. See explanation below.
- e) ☐ entered in part. See explanation below.

The proposed amendment claims benefit of the filing date of the international application of which it is the national stage. As per MPEP 1893.03(c), this is not proper:

Note: a national stage application submitted under 35 U.S.C. 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the date of filing of that international application. See also MPEP § 1893.03(b). Stated differently, since the international application is not an earlier application (it has the same filing date as the national stage), a benefit claim >under 35 U.S.C. 120< in the national stage to the international application is inappropriate >and may result in the submission being treated as an application filed under 35 U.S.C. 111(a). See MPEP § 1893.03(a)<. Accordingly, it is not necessary for the applicant to amend the first sentence of the specification to reference the international application number that was used to identify the application during international processing of the application by the international authorities prior to commencement of the national stage. For a comparison with 35 U.S.C. 120 benefit claims in a national application filed under 35 U.S.C. 111(a), see MPEP § 1895.

Regarding the claim of priority to the Dutch patent applications, the claim of priority in the oath/declaration is sufficient and thus the addition of the claim of priority to the first sentence of the application is not necessary.


TERRY MCKELVEY
PRIMARY EXAMINER